

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

TIMOTHY COOLEEN, )  
Plaintiff, )  
v. ) Civil Action No. 04-63 Erie  
JOHN LAMANNA, et al., )  
Defendants. )

**MEMORANDUM ORDER**

This civil rights action was received by the Clerk of Court on March 1, 2004, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation, filed on December 19, 2008 [Document # 92], recommended that the motion to dismiss or for summary judgment [Document # 87] filed by Defendants be denied; that the motion for summary judgment [Document # 85] filed by Plaintiff be denied; and that the Clerk of Courts be directed to terminate the United States of America as a Defendant from this action. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail and on Defendants.

A document entitled "Plaintiff's Objections to the Honorable Court's Report and Recommendation" [Document # 94] was filed by Plaintiff on January 7, 2009. A review of these "objections" however, reveal that Plaintiff has not objected to the Magistrate Judge's recommendation with respect to the disposition of the pending motions.

On January 12, 2009, Defendants filed Objections to the Report and Recommendation. [Document # 95]. In their Objections, Defendants argue, inter alia, that Defendants Menna, LaManna, Smith and Grimm should be dismissed from this action because they played no

affirmative part in Plaintiff's medical care.

After de novo review of the case, together with the Report and Recommendation and the objections thereto, this Court will adopt the Report and Recommendation with the exception of the *respondeat superior* analysis as to Defendants Menna and LaManna.

At this stage of the proceedings in the face of a motion for summary judgment, there is no evidence in the record that suggests that Defendants Menna or LaManna were involved in the denial or delay of medical treatment, and so, they should be dismissed from this action. However, there is evidence in the record that demonstrates that Defendants Grimm and Smith were involved in the denial of the followup appointment with Dr. Gilman around August or September of 2003. See Document # 88-4, page 8 of 47, undated URC denial signed by Grimm and Smith.

AND NOW, this 9<sup>th</sup> day of March, 2009;

IT IS HEREBY ORDERED that Defendants' motion to dismiss or for summary judgment [Document # 87] is GRANTED IN PART and DENIED in part, and Plaintiff's motion for summary judgment [Document # 85] is DENIED.

IT IS FURTHER ORDERED that the Clerk of Courts terminate the United States of America, Menna, and LaManna as Defendants from this action.

The Report and Recommendation of Magistrate Judge Baxter, dated December 19, 2008, is adopted as the opinion of the Court with the exceptions explained above.

s/ Sean J. McLaughlin  
United States District Judge